

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
APPELLATE RULES (I.A.R.) 14(a),)
17(e)(1)(c), 24, 25(c), 27, 34(a), 42(b) and 118(a))

ORDER

The Court having reviewed a recommendation from the Appellate Rules Advisory Committee to amend the Idaho Appellate Rules, and the Court having fully considered the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Appellate Rules, as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That a Rule 14(a) be, and the same is hereby, amended to read as follows:

Rule 14. Time for filing appeals.

All appeals permitted or authorized by these rules, except as provided in Rule 12, shall be taken and made in the manner and within the time limits as follows:

(a) Appeals From the District Court. Any appeal as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action. The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorney's fees), in which case the appeal period for all judgments or orders commences to run upon the date of the clerk's filing stamp on the order deciding such motion. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. ~~In a criminal case, the time to file an appeal is enlarged by the length of time the district court actually retains jurisdiction~~

~~pursuant to Idaho Code. When the court releases its retained jurisdiction or places the defendant on probation, the time within which to appeal shall commence to run. If, at the time of judgment, the district court retains jurisdiction pursuant to Idaho Code § 19-2601(4), the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between entry of the judgment of conviction and entry of the order relinquishing jurisdiction or placing the defendant on probation; provided, however, that all other appeals challenging the judgment must be brought within 42 days of that judgment.~~ Provided, if a criminal judgment imposes the sentence of death, the time within which to file a notice of appeal does not commence to run until the death warrant is signed and filed by the court.

2. That Rule 17(e)(1)(c) be, and the same is hereby, amended to read as follows:

Rule 17. Notice of appeal - Contents.

(e) Designation of Appeal.

(1) A Designation of the Judgment or Order Appealed From. The notice of appeal shall designate the judgment or order appealed from which shall be deemed to include, and present on appeal:

(C) All interlocutory or final judgments and orders entered after the judgment or order appealed from except orders relinquishing jurisdiction after a period of retained jurisdiction or orders granting probation following a period of retained jurisdiction.

3. That Rule 24 be, and the same is hereby, amended to read as follows:

Rule 24. Reporter's transcript – Number – Estimate of fees – ~~Payment to clerk in trust~~ – Time for preparation – Waiver of reporter's fee.

(c) Estimate of Reporter's Fees - Filing. Upon the conclusion of any trial in the district court, or proceeding in an administrative agency, the reporter shall estimate the number of pages or cost of preparing a transcript of the trial or proceeding and shall certify the amount thereof in writing which shall be delivered to the clerk and filed in the file of the action or proceeding. In the event the reporter fails to so estimate the fees for a transcript within two (2) days from the conclusion of the trial or proceeding, the estimated fees for preparation of the transcript shall be deemed to be the sum of \$200.00, unless the reporter shall thereafter file the reporter's estimated fees before the filing of a

notice of appeal; provided, the reporter's estimated fee may be included in the minute entry of the hearing or proceeding or stamped or endorsed thereon.

(e) **Time for Preparation of Transcript.** The reporter of any trial or proceedings shall prepare and lodge with the district court or with the administrative agency the requested transcript(s) according to the following:

(1) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be less than 100 pages in length, the transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript ~~of filing of the first notice of appeal~~.

(2) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be more than 100 pages in length but less than 500 pages in length, the transcript shall be due within 63 days from the date the reporter is notified by the Supreme Court of the requested transcript ~~of filing of the first notice of appeal~~.

(3) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be more than 500 pages in length, and the court reporter estimates that additional time above the 63 days set out in section (d)(2) will be needed to complete the transcript, then the court reporter must file a proposed completion schedule with the Supreme Court. This motion for time to file a transcript estimated to be over 500 pages shall be filed on a form approved by the Supreme Court. The court will then determine the due date for the lodging of the transcript with the district court.

(4) In the event a court reporter fails to provide a written summary of the anticipated length of the reporter's ~~reporters~~ transcript according to part ~~(b)~~ (c) of this rule, the reporter's transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript ~~of filing of the first notice of appeal~~.

(g) **Past Due Transcripts.** In the event a transcript is 14 days past due, the clerk of the Idaho Supreme Court shall notify the court reporter, trial court administrator, administrative district judge and the district judge responsible for supervising the reporter, and the trial court administrator shall take appropriate action which may include

(1a) imposing disciplinary action,

(2b) identifying another official reporter in the district who can provide coverage for court proceedings while the transcript is completed,

(3e) implementing a performance improvement plan that requires weekend and evening hours to complete the transcript(s),

(4d) identifying an official or a freelance court reporter who will complete the transcript and be compensated as appropriate, or

(5e) with approval of the Administrative Director of the Courts, removing the court reporter from the courtroom until the transcript is complete and hiring a different court reporter to provide coverage for court proceedings. In the event a transcript is reassigned to a different court reporter, the court reporter must immediately turn over all notes of the particular proceeding to the trial court administrator. The trial court administrator shall

notify the clerk of the Supreme Court of the action taken regarding the transcript, including the anticipated date of filing and any reassignment.

4. That Rule 25(c) be, and the same is hereby, amended to read as follows:

Rule 25. Reporter's transcript -- Contents.

(c) **Standard Transcript - Criminal Appeals**. If any party requests the reporter's "standard transcript", the transcript shall include all testimony and proceedings reported by the reporter in the trial of the action or proceedings or the hearing at which the guilty plea was entered and the sentencing hearing, except the following which shall not be included in a standard transcript:

5. That Rule 27 be, and the same is hereby, amended to read as follows:

Rule 27. Clerk's or agency's record - Number - Clerk's fees - Payment of estimated fees - Time for preparation - Waiver of clerk's fee.

(b) **Option for scanning the record**. In counties listed on a roster maintained by the Office of the Supreme Court Clerk as authorized to scan the record, the appellant may request that the clerk of the district court scan the entire district court file as the record ~~in lieu of the appellant designating~~ or may designate certain documents to be included in the scanned record. All filed documents will be scanned in pdf format and five copies of the clerk's record in CD format will be prepared and distributed in accord with subsection (a) of this rule. Exhibits, including a presentence investigation report, shall be sent in accord with Rule 31. The district court clerk shall notify the Clerk of the Supreme Court by e-mail that the record will be provided in this manner.

(c) **Clerk's Fee.**

(1) **Paper copy**. The clerk of the district court shall charge and collect a fee for the preparation of the record in the sum of \$1.25 for each page of the record. Provided, in addition to this fee the clerk shall charge and collect an additional fee for the actual cost of the record covers. Such fee shall be full payment for five complete copies of the record. Any party may obtain an additional copy of the record for the charge of \$.50 per page. The clerk of an administrative agency shall charge such sum, in any, as ordered by the administrative agency.

(2) **Scanned Copy**. The clerk of the district court shall charge and collect a fee for preparation of the scanned record in the sum of \$0.65 for each page of the district court

file if the entire file is scanned. If, at the appellant's request, less than the full record is scanned, then the clerk of the court shall collect a fee of \$100.00 plus \$0.65 per page for the scanned pages. In both instances, sSuch fee shall be full payment for five complete copies of the record. Any party may request an additional copy of the record on CD upon payment of \$20.00 to the clerk of the district court.

6. That Rule 34(a) be, and the same is hereby, amended to read as follows:

Rule 34. Briefs on appeal – Number – Length – Time for filing – Service of briefs.

(a) **Number of Copies.** With the exception of cases governed by Idaho Appellate Rule 35(h), the original bound brief, six (6) bound copies, and one unbound, unstapled copy of all appellate briefs shall be filed with the Supreme Court and the original shall be signed by counsel submitting the same. In cases governed by Idaho Appellate Rule 35(h), only the original and four (4) copies of all appellate briefs shall be filed.

7. That Rule 42(b) be, and the same is hereby, amended to read as follows:

Rule 42. Petition for rehearing.

(b) **Briefs on the Petition.** A brief or memorandum in support of the petition must be filed within 14 days of the filing date of the petition and shall be typewritten on letter size paper. An original and six (6) 9 copies of the petition and brief shall be filed with the Clerk of the Supreme Court.

8. That Rule 118(a) be, and the same is hereby, amended to read as follows:

Rule 118. Petition for review by the Supreme Court.

(a) **Petition, Time for Filing, Ruling by Supreme Court.** Any party to a proceeding aggrieved by opinion or order of the Court of Appeals may physically file a petition for review with the Clerk of the Supreme Court within twenty-one (21) days after the announcement of the opinion or order, or after the announcement of an order denying rehearing, or after the announcement of an opinion on rehearing or after an opinion is modified without rehearing in a manner other than to correct a clerical error. It is not necessary to file a petition for rehearing with the Court of Appeals before filing a petition for review under this rule. A brief in support of the petition for review must be filed with the petition or within fourteen (14) days thereafter. Such petition shall be processed within the time limits and in the manner prescribed for a petition for hearing rehearing of a Supreme Court opinion as provided by Rule 42. There shall be no response to a petition

for review, unless the Supreme Court requests a party to respond to the petition for review before granting or denying the same. The filing of a petition for review under this rule does not preclude the filing of a timely petition for rehearing under Rule 116; and no action will be taken by the Supreme Court on a petition for review until the Court of Appeals has made a final ruling upon and determination of all petitions for rehearing. If a petition for review is granted, the Supreme Court will include in its order the sequence for the filing of briefs by the parties before oral argument. A brief in support of or in opposition to a petition for review need not be bound nor have any colored cover.

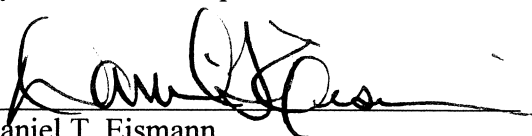
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2011.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 18 day of March, 2011.

By Order of the Supreme Court


Daniel T. Eismann,
Chief Justice

ATTEST: Stephen Kenyon
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 3-21-11

STEPHEN W. KENYON Clerk

By: Kimberly Groves Deputy